

REMARKS

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed May 24, 2010. Currently, claims 22, 24-28, and 30-36 remain pending. Claims 31-34 and 36 have been withdrawn subsequent an Examiner imposed restriction. Claims 22, 24-28, 30, and 35 have been rejected. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections under 35 U.S.C. § 103

Claims 22, 24-28, 30, and 35 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Matsumoto et al. (U.S. Patent No. 4,610,665) in view of Picha et al. (U.S. Patent No. 5,080,654), and further in view of Py (U.S. Patent No. 6,604,561). Applicants respectfully traverse the rejection.

Turning to independent claim 22, which recites:

- 22. A catheter, comprising:
 - an elongate catheter shaft having a proximal end, a distal end, a guidewire lumen defined therethrough, and an inflation lumen defined therethrough;
 - a balloon disposed adjacent the distal end of the catheter shaft, the balloon being in fluid communication with the inflation lumen;
 - a port disposed at the proximal end of the catheter shaft, the port having an opening defined therein that is in fluid communication with the inflation lumen and a flanged end; and
 - a seal member releasably attached to the flanged end and covering the opening;
- wherein the seal member has a solid cross-section.

Independent claim 35, as amended, recites in part, “the seal does not include a preformed opening.” None of Matsumoto et al., Picha et al., or Py taken alone or in combination, appear to teach or suggest a catheter including a releasable seal member including a solid cross-section.

Matsumoto et al. appear to disclose a medical device including a valve body. The valve body appears to be configured to allow an additional medical device, such as a rod-like member, to pass through the valve body into the medical device. The valve body appears to include two slits crossing perpendicular to each other. When the additional medical device is not inserted into the medical device, the slits appear to maintain a substantially fluid tight seal. The slits appear to allow the additional medical device to pass through the valve body while still

maintaining a fluid tight seal. Once the additional medical device has been removed, the slits appear to close and again provide a substantially fluid tight seal. As acknowledged by the Examiner, Matsumoto et al. do not appear to teach or suggest a seal having a solid cross-section or a releasable seal. In formulating the rejection, the Examiner appears to rely on Picha et al. as disclosing a releasable seal and Py as disclosing a seal having a solid cross-section.

Py appears to disclose a resealable cap for a medicament vial. The cap appears to be formed from a material that may be punctured with a needle, such as low density polyethylene. The cap may be punctured with a needle to fill the vial. Once the vial has been filled, Py appears to disclose the cap may be resealed by heating the seal with a laser or direct heat. In formulating the rejection, the Examiner asserts, "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Matsumoto and Picha such that the seal comprised a solid cross-section to further ensure fluid cannot pass through the seal unintentionally." Applicants respectfully disagree.

Py appears to disclose the cap needs to be punctured with a needle or other similar device. The puncture appears to generate a hole through the cap which would remain in place unless the cap were resealed using mechanical means. In contrast, Matsumoto et al. appear to disclose a valve member through which any type of device may pass and once the device has been removed, the valve member maintains a substantially fluid-tight seal. It appears that if one were to modify the device of Matsumoto et al. as suggested by the Examiner some type of through hole would need to be created, thus allowing fluid to pass through the valve member when an additional device is not disposed within the valve member. MPEP 2143.01 V states, "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." Matsumoto et al. disclose at column 2, lines 20 – 28:

The present invention has as its object the provision of a medical instrument having a valve body having hollow rod-like members including hollow cylindrical members and/or solid columnar members of widely varied outer diameters inserted therethrough and held therein in a liquid-tight state, capable of immediately forming a proper closed state when the rod-like member or members are withdrawn, and having a simple construction.

Emphasis added. Clearly, modifying the valve member to include a solid-cross section would render the device of Matsumoto et al. unsatisfactory for its intended purpose.

Therefore, for at least these reasons, none of Matsumoto et al., Picha et al., or Py, taken alone or in combination, appear to teach or suggest the device as claimed. As such, the teachings of Matsumoto et al., Picha et al. and Py are not sufficient to render claims 22 and 35 *prima facie* obvious. For at least these reasons, claims 22 and 35 are believed to be patentable over Matsumoto et al. and Picha et al. and withdrawal of the rejection is respectfully requested. For similar reasons and others, claims 24-28 and 30 which depend from claim 22 and include additional distinguishing features, are believed to be patentable over Matsumoto et al., Picha et al., and Py.

Conclusion

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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